

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2002-000065

03/09/2010

JUDGE M. SCOTT MCCOY

CLERK OF THE COURT

L. Davis

Deputy

IN RE THE MATTER OF  
RICHARD HAYNOR

MICHAEL J SHEW

AND

ANNA GARCIA

ANNA GARCIA  
4529 W OCOTILLO ROAD  
APT 133  
GLENDALE AZ 85301

JOHN R WORTH  
FAMILY COURT SERVICES-CCC  
TASC - PHOENIX

MINUTE ENTRY

Following the continuation of the Evidentiary Hearing on February 8, 2010 concerning Mother/Respondent's Petition to Modify Child Custody, Parenting Time, and Child Support filed on June 24, 2009 and amended June 30, 2009, and Father/Petitioner's Petition to Modify Child Custody, Parenting Time, and Child Support filed October 9, 2009, the Court took this matter under advisement. Having considered the evidence and testimony presented, the Court now rules.

THE COURT FINDS:

1. Petitioner is Richard Haynor. Petitioner is currently unemployed. Father is a fit and proper person to have the care, custody and control of the minor child.

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2. Respondent is Anna Garcia. Respondent is not a lawful permanent resident of the United States or a citizen. Mother testified “thank God for the domestic violence.” She appears to have been referring to her ability to apply for permanent resident status based on her allegation that she is a victim of domestic violence.

3. The parties are the natural parents of Mark Anthony Haynor, born out of wedlock in the United States to the parties on June 23, 2001. Mark Anthony is now 8 years of age and is in the 3<sup>rd</sup> grade. Mark Anthony has special needs, namely, he has been diagnosed with Attention Deficit Disorder in 2008 and may be diagnosed as emotionally disabled. Mark Anthony was prescribed Ritalin. The minor child has had difficulty progressing in a mainstream classroom; his behavior has been inappropriate and he was not progressing in school. The minor child’s emotional and mental health issues bear on his placement with either parent. The minor child has an Individualized Education Plan (i.e., an “IEP”) because of his special needs.

4. Petitioner filed a Complaint in Paternity on January 4, 2002. Respondent filed an Answer.

5. The Hon. Richard J. Trujillo found that “in reviewing the relevant factors under A.R.S. 25-403, it is clear that Mother has not encouraged frequent or meaningful contact between Father and son . . .” See minute entry filed February 25, 2003.

6. After much litigation, the parties executed a Joint Custody Parenting Plan. Regarding child custody, the parties were ordered to make all major decisions regarding Mark Anthony jointly. Father has parenting time “every other week from Wednesday at 6:00 p.m. through Sunday at 6:00 p.m.” The parenting plan has a specific schedule of holiday and vacation parenting time. Father has previously been awarded attorney’s fees related to Mother’s unreasonableness.

7. In May 2005 Mother filed a Petition for Order of Protection in which she alleged that Father abused the minor child. Mother also filed an Emergency Petition to Modify Custody. After a hearing, Commissioner Raymond P. Lee dismissed the Petition on a directed verdict and found that there is no basis for the Order of Protection.” See minute entry filed July 1, 2005. Commissioner Lee dismissed the Order of Protection sua sponte.

8. In June 2009 Mother filed another Emergency Petition and a Petition to Modify Custody and alleged that Father abused the minor child. The court denied the request to modify custody on an emergency basis and set the matter for trial on the underlying Petition.

9. On October 9, 2009, Father filed a Petition to Modify Custody.

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10. On November 4, 2009 the court appointed John Worth to act as the Best Interests Attorney.

11. The matter was tried to the court on December 11, 2009, January 20, 2010 and February 8, 2010.

12. In *Pridgeon v. Superior Court*, 134 Ariz. 177, 655 P.2d 1 (1982), the Supreme Court set the standard for modifications of custody: In considering a motion for change of custody, the Court must initially determine whether a change of circumstances has occurred since the last custody order. Only after the court finds a change has occurred does the Court reach the question of whether a change in custody would be in the child's best interest. *Black v. Black*, 114 Ariz. 282, 560 P.2d 800 (1977). *Hoffman v. Hoffman*, 4 Ariz.App. 83, 417 P.2d 717 (1966). The trial court has broad discretion to determine whether a change of circumstances has occurred. *In re Wise*, 14 Ariz.App. 125, 481 P.2d 296 (1971). On review, the trial court's decision will not be reversed absent a clear abuse of discretion, i.e., a clear absence of evidence to support its actions. *Smith v. Smith*, 117 Ariz. 249, 571 P.2d 1045 (App.1977); *Bailey v. Bailey*, 3 Ariz.App. 138, 412 P.2d 480 (1966).

13. A.R.S. Section 25-403 requires the court to make findings of fact regarding the following factors:

A. The wishes of the child's parent or parents as to custody.  
Mother is seeking sole custody. Father is seeking sole custody.

B. The wishes of the child as to the custodian.  
Mark Anthony was not interviewed by the court, the Parenting Conference Evaluator or the Best Interest Attorney. The social worker hired by Mr. Worth interviewed Mark Anthony but did not provide any information regarding Mark Anthony's wishes. Father testified that he believes Mark Anthony prefers to live with Father.

C. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.  
Mark Anthony is appropriately bonded to both parents. Mark Anthony does not have any siblings and neither parent has any other children.

D. The child's adjustment to home, school and community.  
Mark Anthony is well adjusted to living with each parent in his/her home, to his new school and to the local community.

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E. The mental and physical health of all individuals involved.

Mother and Father are both physically healthy. The court does not have any credible evidence regarding any identified mental health problems for either parent. Mark Anthony is physically healthy but he does have developmental and emotional difficulties. Mark Anthony has been diagnosed with ADHD by his pediatrician years ago. There has been persistent conflict between Mother and Father regarding treatment of Mark Anthony's psychological needs. For example, in Father's May 27, 2005 Response to Emergency Petition to Modify Child Custody and To Stop or Change Parenting Time Without Notice, Father stated that "that parties have been advised by a medical professional to treat the minor child's admitted behavioral problems with Ritalin. However, Respondent [Mother] refuses to follow the medical professional's advice and will not consent to treat the minor child's behavioral problem with Ritalin..." Mother testified at her deposition and trial that she never advised Father that she changed her opinion about her willingness to prescribe Ritalin to Mark Anthony.

The Best Interest Attorney retained Holly Judge, a social worker, to investigate the minor child's best interest. Ms. Judge, through Mr. Worth, stated in her report and at trial that she believed that Mother provided Father with notice of the medication but that Father was not reasonable. Mother, however, testified clearly in her deposition that she never advised Father that Mark Anthony was again prescribed Ritalin and that she agreed to give it to Mark Anthony. Mother testified she did not begin to even send Ritalin with Mark Anthony to take during Father's parenting time until after she was ordered to do so on December 11, 2009.

The court finds that Mother did not seek Father's consent to treat Mark Anthony's ADHD (or other emotional problem) with Ritalin and that, in fact, she actively concealed it from Father and has attempted to portray Father as being unreasonable.

F. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.

Father is clearly more likely to allow Mark Anthony frequent and meaningful continuing contact with Mother. Mother has contacted police on numerous occasions to report that Father has abused Mark Anthony and/or violated the parenting time order. Father has never been arrested or convicted of any offense related to abuse of Mark Anthony nor has he ever been found to have violated the parenting plan. Mother admitted that she was advised by officers of the Gilbert Police Department after numerous requests for "welfare checks" that Mother could be charged with providing false information to the police department if she did not cease and desist from continuing to falsely accuse Father of criminal violations. Mother has also contacted CPS to report Father "inappropriately touching" Mark Anthony. The report was found to be unsubstantiated.

G. Whether one parent, both parents, or neither parent has provided primary care of the child.

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Although Mother has had a little over half of the available parenting time with Mark Anthony, both parents have provided primary care of the child during his lifetime.

H. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.

This section does not apply; the parents have not reached any agreement presently although they did previously agree to share joint custody.

I. Whether a parent has complied with the ARS 25-351.

Father attended the class on January 24, 2002. Mother attended the class on January 7, 2002.

J. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.

Mother admitted that she was advised by officers of the Gilbert Police Department after numerous requests for “welfare checks” that Mother could be charged with providing false information to the police department if she did not cease and desist. The court previously found that Mother’s claims of abuse against Mark Anthony were not sufficient to justify a protective order or any modification of the custody and parenting time order.

Father has never been accused of any act of false reporting of child abuse or neglect or warned about making false allegations.

14. A.R.S. Section 25-403.03 provides that the “court should consider evidence of domestic violence against minor child’s best interest.” The statute creates a rebuttable presumption against placement with the offending parent unless there is evidence of “mutual” domestic violence. Mother has alleged that Father has committed domestic violence against Mother. However, the majority of Mother’s evidence has already been heard and considered in previous proceedings and did not serve as a bar to the parties having joint custody. Mother has not established by a preponderance of the evidence that Father committed *any* domestic violence against Mother or Mark Anthony since entry of the current custody order. The court did hear testimony from Father’s estranged spouse of domestic violence against her. The court finds that Ms. Lapaglia’s testimony is not credible.

The Best Interest Attorney and his social worker both argued that Father was abusive to Mark Anthony by sleeping with Mark Anthony nude, allowing pornography in his home, locking Mark Anthony’s room and other sundry allegations. The vast majority of these allegations were raised by Ms. Lapaglia. Ms. Judge testified she never met with Ms. Lapaglia in person and that she never followed up with Father prior to making a recommendation and finding that Father was abusive based on Ms. Lapaglia’s information. There is no credible evidence, however, that Father has in fact been abusive. Even Ms. Lapaglia at trial testified that she is not aware of Father abusing Mark Anthony or having inappropriate pornography in his home.

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15. In addition to the above information, a change of circumstances which is substantial and continuing has occurred in the following particulars:

A. Mother has denied Father parenting time with the minor child on multiple occasions;

B. Mother gave Mark Anthony psychotropic drugs without Father's knowledge or consent;

C. Mother authorized medical and mental health treatment on multiple occasions without Father's knowledge or consent;

D. Mother enrolled the minor child in the "For Success" educational facility that Father believes was abusive. The staff of the facility locked the minor child in a dark, small closet for a long time because the teacher said that the minor child was not doing his math. Father saw the minor child in the closet and he was hysterical and barely communicative. Mother refused to agree with the recommendations of *all* of the educational professionals who recommended Mark Anthony attend a different school. Mother wanted to keep the child in her chosen school, apparently for her convenience.

E. Mother has filed multiple reports with various local law enforcement agencies and has alleged that Father has abused the minor child. The reports have been false and/or misleading;

F. Mother has unnecessarily exposed the minor child to stressful police contact, interviews, questioning, interrogation, phone calls, welfare checks and investigations;

G. Mother does not have a valid drivers license but she regularly operates as motor vehicle with the minor child in the vehicle.

H. Mother admitted at trial that she could have left with Mark Anthony and that she thought about it;

I. The minor child prefers to live with Father;

J. Mother is not a lawful permanent resident or citizen of the United States. Father believes that Mother is subject to deportation;

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K. Mother resides in an 870 square foot, two bedroom apartment with the minor child.

L. Father has a valid protective order against Mother that was upheld after an evidentiary hearing.

16. Mother has taken unreasonable positions regarding custody and parenting time issues. Father is currently unemployed and Mother is employed.

Ultimately, the Court finds that both Mother and Father are fit and proper parents. Mother has shown strengths, but she has failed to keep Father apprised of important medical appointments and decisions, frequently and needlessly involved the police in Parenting Time issues and opposed moving Mark Anthony to a school at which he thrived. Her opposition appears to have been based on her own convenience.

Provided he remains sober, Father is best equipped to address Mark Anthony's considerable challenges.

**IT IS THEREFORE ORDERED** awarding to Father sole legal custody of Mark Anthony Haynor (DOB: June 23, 2001).

Regarding Parenting Time,

**IT IS ORDERED:**

1. Commencing March 11, 2010, Mother shall have Parenting Time with Mark Anthony every other weekend, picking the child up on Thursday after school (or 4 p.m. if a non-school day) and returning him to school (or Father's care at 9 a.m. if a non-school day) on the following Monday morning.
2. Mother shall also have Parenting Time every Tuesday from 5:30 p.m. to 7:30 p.m.
3. Holiday and Vacation Parenting Time shall be as set forth in the parties' existing Joint Parenting Plan.

Regarding Mark Anthony's medical issues,

**IT IS ORDERED** that Father shall immediately:

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1. Work with AHCCS, Value Options, Empact and any other appropriate organization to complete Mark Anthony's psychiatric assessment.
2. Coordinate and consult with Mark Anthony's pediatrician, psychiatrist, and psychologist(s) to form a treatment team and treatment plan to address his psychiatric issues.
3. Follow up on Mark Anthony's dental care needs.
4. File a status report in 90 days and every 90 days thereafter to inform the Court of the progress made concerning Mark Anthony's medical needs.

Father shall also keep Mother apprised of the above as well as the names and contact information for all medical providers.

In exercise of the Court's discretion, each party shall bear his/her own attorneys' fees and cost.

**OTHER CUSTODY/PARENTING TIME ORDERS**

1. Neither parent shall expose the child to any incidents of domestic violence or extreme or hostile conflict or language. Neither parent shall expose the child to derogatory comments about the other parent or the relatives or friends of the other parent. The parents shall neither argue nor insult each other in the presence of the child or allow a third party to do so. Neither parent shall frighten the child by saying things such as that the other parent is trying to take him/her away, the other parent does not love him/her, want to see him/her, or is interfering with visits.

2. The parents shall not discuss custody, parenting time or child support issues in the presence of or with the child. The parents shall ensure that the child is not exposed to any discussion of custody disputes or legal proceedings other than to assure the child that the parents are trying to work out appropriate arrangements so that the child can have frequent and regular access to both parents.

3. The parents shall not question the child about where they want to live. The parents shall not question the child about the personal life of the other parent. The parents shall not express to the child how angry they are at the other parent, how they doubt the trustworthiness of the other parent or how hurt or frustrated they are by the actions of the other parent.

4. The parents are encouraged to communicate by e-mail and/or facsimile. Except for minor questions or emergencies, the parents are to afford each other reasonable time to consider and respond to requests or inquiries. However, e-mail and/or facsimile

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communications should be responded to within 24 hours. If the parents do not have e-mail or fax available to them, telephonic communication is allowed.

5. Each parent is restrained from using or permitting others to use the child to convey oral or written messages between households. Communications should take place directly between adult household members and the child should be protected from involvement in adult issues, for example, changes in the parenting time schedule.

6. Neither parent shall treat the child, or allow the child to be treated by any third party in the home, in a different manner than they treat the other children in the home, simply because the child has a relationship with the other parent or spends time with the other parent.

7. The child shall have phone access to both parents at all times. The child shall be given privacy during phone calls and there shall be no interference with phone access.

8. Both parents shall be listed as emergency contacts on any such forms that require contact information such as, but not limited to, education, activities, childcare and/or medical providers.

9. During exchanges, the parties shall make every effort to be polite and respectful to each other. Interaction between the parents shall be restricted to the orderly exchange of the child. The parents are not to use the exchanges of the child or other circumstances in which the child are present to share information with one another, make requests of one another, engage in negotiations, or related activities.

10. Pursuant to A.R.S. § 25-403.06, unless otherwise provided by Court order or law, on reasonable request, both parents are entitled to have equal access to documents and other information concerning the child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of such records or from the other parent.

11. No petition to modify the existing Court orders regarding custody and parenting time shall be filed without the parties first attempting to resolve their dispute through mediation with their assigned parenting coordinator, private mediation, or Conciliation Services.

12. **HIGH CONFLICT RESOLUTION CLASS**

**IT IS ORDERED** that both parties shall separately attend and complete a High Conflict Resolution class within 60 days of the date of this order. Each party shall call **480-727-**

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**7135** to register for the class. Specific information regarding the date, time and location of the class will be provided when each party calls the above number.

**IT IS FURTHER ORDERED** waiving the fee for the High Conflict Resolution Class for both Petitioner and Respondent.

**WARNING**

**IF YOU FAIL TO SCHEDULE AND ATTEND THE CLASS AS ORDERED, YOU MAY BE REQUIRED TO PAY A \$100 NO SHOW FEE. IF YOU CANNOT ATTEND FOR ANY REASON, YOU MUST REQUEST AND BE GRANTED PERMISSION TO RESCHEDULE YOUR ATTENDANCE AT LEAST 24 HOURS BEFORE THE SCHEDULED CLASS. PLEASE CALL THE NUMBER LISTED ABOVE IF YOU NEED TO REQUEST TO RESCHEDULE YOUR ATTENDANCE.**

**TASC TESTING FOR FATHER**

**IT IS ORDERED** that Father shall undergo random drug testing on the following basis:

A. Agency. Father's random drug testing shall be conducted at the following testing agency or at a location of TASC, Inc.

**TASC, Inc.  
2234 N. 7th Street  
Phoenix, Arizona  
Phone: (602) 254-7328**

B. First Test. Father shall report to TASC no later than 5:00 p.m., on **March 15, 2010**.

C. Scope. Father shall undergo a full spectrum substance and drug test (Screen "A") for each test ordered herein.

D. Cooperation. Father shall cooperate fully as reasonably required by the testing agency to comply with this Order, including:

1. Father shall provide such samples as are reasonably required by the testing agency to comply with this order.
2. Father shall timely report for testing and provide samples as directed by the testing agency.

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3. Father shall present photo identification to the testing agency at the time of each test.
4. Father shall sign and deliver such forms of consent, authorization and release of test results as shall be reasonably required by the testing agency to comply with this Order.

E. Cost. Father shall pay the cost of his testing (\$25.00 per test) in money order or cashier's check at the time of testing.

F. Frequency & Duration. Father shall be randomly tested not less than once per week until further Order of the Court.

G. Positive/Diluted/Missed Test. In the event that Father tests positive on any test, misses a random test, or provides a diluted test sample on any test, the cycle and frequency of testing set forth in paragraph F above, shall be started again with weekly tests. All parties are advised that the failure, neglect or refusal to participate in testing, or providing a diluted test sample at the time of testing, may be considered an admission by the party that the testing, if properly conducted, would have revealed the use of the substance(s) tested for, which finding is contrary to the best interest of a child. Certain prescription medications may cause a positive drug test result. Parties who are required to drug test are expected to provide proof to the court of prescriptions and documentation from health care providers regarding the lawful possession and use of those medications.

H. Reporting. The parties are hereby advised that test results ARE NOT confidential and will be filed in the Court file upon receipt by the Court. The results of each test shall be reported directly to counsel for both parties, or directly to the parties at the addresses provided by the parties to the testing agency, if unrepresented by counsel. The testing agency shall also provide this Court with a copy of each test result / a Monthly Drug Test Summary Report / a Cumulative Drug Test Summary Report.

**CHILD SUPPORT**

THE COURT FINDS that the relevant financial factors required to be included, and the discretionary allowances and adjustments which the Court will allow, for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet filed separately this date which the Court hereby incorporates and adopts as its findings with respect to child support.

As set forth in the Child Support Worksheet prepared by the Court,

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THE COURT FINDS Father's attributed gross income is \$7.25 per hour<sup>1</sup>; Mother's attributed gross income is \$7.25 per hour<sup>2</sup>; Mother receives a Parenting Time adjustment for 128 days in the amount of \$98.48.

**IT IS ORDERED** that Mother shall pay to Father as and for child support the sum of \$154.03 per month, plus \$2.25 per month as and for the Clearinghouse Handling Fee for a total of \$156.28, payable through the Support Payment Clearinghouse on the 1st day of each month commencing March 1, 2010 by Order of Assignment.

**LET THE RECORD REFLECT** an Order of Assignment is initiated electronically by the above-named deputy clerk.

Until the wage assignment becomes effective, it is the responsibility of the party obligated to pay child support to pay the support to **Support Payment Clearinghouse, P. O. Box 52107, Phoenix, Arizona 85072-2107**. The payment should show the case number and/or ATLAS case number and the name of the party paying support and the name of the party who will receive the payment.

If payments are made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation.

Any change in the paying party's employment and any change in the residential address of either party **must** be submitted to the Clerk's Office, in writing, within ten (10) days of the change (A.R.S. 25-322(C)). Failure to notify the Clerk's Office of any change may be considered contempt of Court.

Arizona Revised Statutes Section 25-503(I) states that, with certain exceptions, an unpaid child support judgment that became a judgment by operation of law (this means that it became a judgment when it was due and unpaid) expires three years after the emancipation of the last remaining unemancipated child who was included in the court order unless it is reduced to a formal written judgment by the court. An Obligee must apply in writing to the court to obtain a formal written judgment.

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<sup>1</sup> Father is currently unemployed. The Court finds it fair to attribute minimum wage to Father.

<sup>2</sup> Mother currently works as a care giver. She makes approximately \$10 per hour and works approximately 21 hours per week. However, since Mother is fully able to work, the Court will attribute minimum wage to Mother.

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**IT IS ORDERED** that Father shall be responsible for ensuring that Mark Anthony has health insurance. All medical, dental and orthodontia expenses incurred for the health and protection of the children not covered by insurance shall be paid 50% by Father and 50% by Mother.

**IT IS FURTHER ORDERED** that if either party requests reimbursement from the other for any uncovered healthcare expenses for the children, the request together with the proof of payment shall be submitted to the other party within 90 days of the expense being incurred and reimbursement made within 90 days thereafter. Failure to submit a claim within a timely fashion waives the claim.

**IT IS FURTHER ORDERED** that every 24 months hereafter, the parties shall exchange financial information, including tax returns, spousal affidavits and earnings statements.

**IT IS FURTHER ORDERED** signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HON. M. SCOTT McCOY

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HON. M. SCOTT McCOY  
JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at:  
<http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.